



Original: **English**

No.: **ICC-02/05-01/20**

Date: **15 May 2024**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

**PUBLIC
WITH CONFIDENTIAL ANNEX 1**

**Public Redacted Version of Defence additional request for
in-court protective measures for Witnesses D-38 and D-39
(ICC-02/05-01/20-1128-Conf, 15 May 2024)**

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. On 29 September 2023, the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Defence”) filed its request for in-court protective measures for 16 Defence Witnesses expected to appear at trial.¹ This motion was granted by the Honourable Trial Chamber (“Chamber”) on 12 October 2023.²

2. Since that ruling, [REDACTED] new witnesses requiring similar protection have been added to the Defence list of Witnesses³: [REDACTED].

3. This is a request to extend the in-court protective measures granted by the Chamber on 12 October 2023 to these [REDACTED] new witnesses, pursuant to articles 64(2) and 68(1), (2) and (4) of the Rome Statute (“Statute”) and rules 86 and 87 of the Rules of Procedure and Evidence (“Rules”).

4. It is submitted that the same objectively justifiable risk exists *vis-à-vis* [REDACTED] and that the protective measures sought are necessary to protect their safety, physical and psychological well-being, dignity and privacy, and, where applicable, that of their families.⁴ A schedule setting out the [REDACTED] witnesses’ pseudonyms, names, in-court protective measures sought, and details supporting the requested measures regarding each witness is found in Annex to the present submission.

5. It is further submitted that the protective measures sought are proportionate and are the least restrictive means necessary to fairly balance Mr Abd-Al-Rahman’s right to, and the victims’ and OTP’s legitimate interest in, a public trial against the Court’s obligation to protect the interests of victims and witnesses who appear before it.

II. CLASSIFICATION

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this request and annex are filed as confidential because they contain sensitive information about defence witnesses. Were the request and annex to be filed publicly in an unredacted

¹ ICC-02/05-01/20-1020-Conf, and its public redacted version [ICC-02/05-01/20-1020-Red](#).

² ICC-02/05-01/20-1032-Conf, and its public redacted version [ICC-02/05-01/20-1032-Red](#).

³ ICC-02/05-01/20-1111-Conf-Anx1.

⁴ ICC-02/05-01/20-645-Conf-Red, para. 9, and its public redacted version [ICC-02/05-01/20-645-Red2](#).

form, the relief requested would be rendered redundant. A [REDACTED] public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

7. The Defence seeks protective measures to: (i) shield Defence witnesses' identities from the public by the use of pseudonyms, and face and voice distortion; and (ii) protect portions of Defence witnesses' testimony from the public in circumstances where the nature and detail of that testimony may reveal a witness's identity by the use of closed or private session.

8. The Defence would respectfully propose following the Trial Chamber's practice to date by which a request for closed or private session is made orally at the time of a witness's testimony when questions and/or the answers to those questions might reveal the witness's name or other identifying information.

9. In addition, the Trial Chamber may permit a justified request for closed or private session to be made orally, on a case-by-case basis, when specific facts of a particularly private or sensitive nature are to be adduced during testimony that raise a higher than normal risk of subjecting the witness to traumatisation or re-traumatisation if broadcast publicly due, for example, to a witness's emotional state.

A. The current security situation in Sudan

10. In the First Protective Measures Decision, the Trial Chamber took account of the Prosecution's submission that:

the security situation in Sudan, and particularly in Darfur, since the military coup on 25 October 2021, has impacted the Prosecution's ability to operate, and ensure safety and security of witnesses living in Sudan.⁵

11. In its First Protective Measures Request, the Prosecution argued that:

The Court's jurisprudence establishes that evidence of direct threats is not required to establish the existence of an objectively justifiable risk. In addition, Trial Chambers in *Ntaganda*, and *Ruto and Sang* have held that "the security situation in a particular territory may be pertinent when considered in relation to the circumstances of a particular witness."⁶

⁵ First Protective Measures Decision, para. 13, citing Prosecution's request for in-court protective and special measures, ICC-02/05-01/20-609-Conf-Exp, 25 February 2022 ("First Protective Measures Request"), paras 18-19. A public redacted version was notified on 1 March 2022, [ICC-02/05-01/20-609-Red2](#).

⁶ First Protective Measures Request, para. 15 (internal footnotes omitted).

...

As the Chamber has previously been informed of, on 25 October 2021 a *coup d'état* overthrew the joint civilian-military government in place. Several civilian officials including Prime Minister Hamdok were removed from their position. On 21 November 2021, Prime Minister Hamdok was reinstated. However, on 2 January 2022 he resigned.⁷

...

The security situation in Sudan [REDACTED] are reasons to grant protective measures in this case.⁸

12. The Prosecution argued that there was an “objectively justifiable risk” to its witnesses [REDACTED].⁹ The Prosecution’s request for protective measures was granted, at least in part, on the strength of its arguments regarding the security situation in Sudan. If that security situation justified the granting of protective measures to Prosecution witnesses in March and June 2022, it is submitted that *a fortiori* the security situation in Sudan justifies the granting of the same protective measures for Defence witnesses in September 2023. The security situation in Sudan has dramatically deteriorated since the outbreak of a brutal armed conflict between Sudan’s *de facto* leader, Abdel Fattah al-Burhan and the Sudanese Armed Forces on one side, and Mohammed Hamdan Dagalo (“Hemedti”) and his Rapid Support Force (“RSF”) on the other side on 15 April 2023. The Chamber has been addressed in detail on the security situation in Sudan. [REDACTED].¹⁰ This assessment is confirming the risks bearing on Witnesses [REDACTED] as a result of the current security situation in Sudan and their need to be protected. The requested in-court protective measures are the only one that the Court is in a position to offer them[REDACTED].

B. Witnesses [REDACTED]

⁷ First Protective Measures Request, para. 17 (internal footnotes omitted).

⁸ First Protective Measures Request, para. 20 (internal footnotes omitted). *See also* Prosecution’s second request for in-court protective measures, ICC-02/05-01/20-697-Conf, 31 May 2022 (“Second Protective Measures Request”), para. 15 (public redacted version notified on 1 June 2022, [ICC-02/05-01/20-697-Red](#)).

⁹ First Protective Measures Request, para. 21.

¹⁰ [REDACTED].

13. Witnesses [REDACTED]. The Defence hereby requests the extension of the same protective measures as applied to other Defence witnesses [REDACTED]¹¹ to them.

14. [REDACTED].¹² [REDACTED].¹³ [REDACTED].

15. [REDACTED].

16. Submissions made in the “Defence Request for an Order Prohibiting Disclosure of some Defence Witnesses’ Identities to the Sudanese Authorities”¹⁴ are incorporated by reference. It is worth highlighting that there is no dispute between the Prosecution and the Defence regarding the risks to [Prosecution] witnesses should the GoS learn of their testimony:

[REDACTED]¹⁵

17. It is submitted that there is no principled reason why precisely the same considerations do not and should not apply to the Defence witnesses, including Witnesses [REDACTED].

F. CONCLUSION AND RELIEF

18. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber extend the protective measures already granted for the other Defence witnesses to Witnesses [REDACTED].



Dr Cyril Laucci,
Lead Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 15 May 2024,

At The Hague, The Netherlands.

¹¹ Witnesses [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ ICC-02/05-01/20-1007-Conf, 28 August 2023, paras A public redacted version was notified on 11 September 2023, [ICC-02/05-01/20-1007-Red](#).

¹⁵ [REDACTED].